

Message

**From:** Miles, James [miles.james@epa.gov]  
**Sent:** 6/18/2020 1:16:27 PM  
**To:** Teter, Royan [Teter.Royan@epa.gov]  
**Subject:** FW: Request for Assistance with Pesticide Enforcement Issue

I need to look in my archive but found this

**From:** Cobb, Christina <cobb.christina@epa.gov>  
**Sent:** Wednesday, July 13, 2016 12:56 PM  
**To:** Lott, Don <Lott.Don@epa.gov>  
**Cc:** Miles, James <miles.james@epa.gov>  
**Subject:** RE: Request for Assistance with Pesticide Enforcement Issue

## Deliberative Process / Ex. 5

Thanks,

*Christina*

**From:** Lott, Don  
**Sent:** Wednesday, July 13, 2016 12:52 PM  
**To:** Cobb, Christina <cobb.christina@epa.gov>  
**Cc:** Miles, James <miles.james@epa.gov>  
**Subject:** RE: Request for Assistance with Pesticide Enforcement Issue

Christina-

Thanks for handling this request from Mr. Srolovic. I looked at the list of cases you provided and it covers quite a bunch of treated articles enforcement actions over the last number of years.

Deliberative Process / Ex. 5

## Deliberative Process / Ex. 5

Do appreciate your follow-up to this request.

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Donald J Lott, Associate Director  
Waste & Chemical Enforcement Division  
(202) 564-2652 - [lott.don@epa.gov](mailto:lott.don@epa.gov)

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**From:** Cobb, Christina  
**Sent:** Wednesday, July 13, 2016 12:04 PM  
**To:** Lemuel Srolovic <[Lemuel.Srolovic@ag.ny.gov](mailto:Lemuel.Srolovic@ag.ny.gov)>

**Cc:** Lott, Don <[Lott.Don@epa.gov](mailto:Lott.Don@epa.gov)>

**Subject:** RE: Request for Assistance with Pesticide Enforcement Issue

Hi Lemuel,

Attached is a summary of the treated article exemption under 40 C.F.R. § 152.25 and a chart of EPA cases from 2008 to present dealing with the exemption. Note that these cases did not go to hearing, they ended via a Consent Agreement and Final Order (CAFO) which is essentially a settlement; I've attached the CAFOs I could find for the cases listed in the chart.

A case involving treated articles that did go to hearing is the *Microban* case; the final decision was issued by the Environmental Appeals Board (EAB), I've attached that decision to this email as well and summarized the case in the first summary document. You will notice that a majority of treated article exemptions deal with articles treated with antimicrobial pesticides -- i.e. substances or mixtures of substances used to destroy or suppress the growth of harmful microorganisms such as bacteria, viruses, or fungi on inanimate objects and surfaces—as opposed to articles treated with other pesticides such as neonics.

For treated seeds specifically, a good overview of the FIFRA regulatory scheme is layed out in the joint document by the EPA and Canada Pest Management Regulatory Agency entitled “Harmonization of Regulation of Pesticide Seed Treatment in Canada and the United States” April 11, 2003 (attached to this email as well).

I also wanted to point out that there is a case currently in litigation captioned as *Anderson v. McCarthy*, Case No. 3:16-cv-00068 (N.D. Cal. Jan. 6, 2016). This complaint was filed by a coalition of U.S. beekeepers, famers, and affiliated non-government organizations seeking declaratory relief that treated seeds do not qualify for the treated article exemption. Outcome pending.

It could also be useful to check the EPA website for the risk assessment for neonicotinoid pesticides registered with EPA. See here: <https://www.epa.gov/pollinator-protection/schedule-review-neonicotinoid-pesticides>

I hope these documents prove useful and if I come across anything else that might be relevant to your enforcement action I'll be sure to send it your way. Please let me know if there is anything else you are looking for.

Best,

*Christina E. Cobb*

Attorney-Advisor

Pesticides and Tanks Enforcement Branch

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Office of Civil Enforcement

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Washington, DC 20460

202.564.1798

[cobb.christina@epa.gov](mailto:cobb.christina@epa.gov)

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**From:** Lemuel Srolovic [<mailto:Lemuel.Srolovic@ag.ny.gov>]

**Sent:** Friday, July 08, 2016 5:28 PM

**To:** Cobb, Christina <[cobb.christina@epa.gov](mailto:cobb.christina@epa.gov)>

**Cc:** Lott, Don <[Lott.Don@epa.gov](mailto:Lott.Don@epa.gov)>

**Subject:** RE: Request for Assistance with Pesticide Enforcement Issue

Hi Christina – Thank you for your help with this. Your understanding is spot on. We are refining our legal understanding to support an investigation that we hope to launch before the end of this month. Regards, Lem

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**From:** Cobb, Christina [<mailto:cobb.christina@epa.gov>]  
**Sent:** Friday, July 08, 2016 1:52 PM  
**To:** Lemuel Srolovic  
**Cc:** Lott, Don  
**Subject:** Re: Request for Assistance with Pesticide Enforcement Issue

Hi Lemuel,

Your question regarding the sale and distribution of articles treated with an unregistered pesticide has been referred to my branch. As I understand it, you are looking for cases about enforcement actions we've taken regarding treated articles. What does your timeframe look like?

*Christina E. Cobb*  
Attorney-Advisor  
Pesticides and Tanks Enforcement Branch  
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